

The opinion in support of the decision being entered
today was *not* written for publication and
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PAT J. EVANS, JOHN G. PEARCE, and DUANE E. PEOPLES

Appeal 2007-0235
Application 09/945,006
Technology Center

Decided: July 5, 2007

Before TERRY J. OWENS, HUBERT C. LORIN, and STUART S. LEVY,
Administrative Patent Judges.

OWENS, *Administrative Patent Judge.*

DECISION ON APPEAL

The Appellants appeal from a rejection of claims 1-17, 42, 43 and 45,
which are all of the pending claims.

THE INVENTION

The Appellants claim a footwear insole. Claim 1 is illustrative:

1. An insole for supporting a longitudinal arch and a transverse arch of a plantar surface of a human foot, the insole comprising:

a raised arch support portion having a peripheral contour generally conforming to the longitudinal arch and the transverse arch of the plantar surface of the human foot.

THE REFERENCE

Schroer

US 5,282,326

Feb. 1, 1994

THE REJECTIONS

The claims stand rejected over Schroer as follows: claims 1-6, 8-11, 13-15 and 17 under 35 U.S.C. § 102(b), and claims 7, 12, 16, 42, 43 and 45 under 35 U.S.C. § 103.

OPINION

We affirm the aforementioned rejections.

Rejection under 35 U.S.C. § 102(b)

Schroer discloses a footwear removable insole (2) “designed to fit the general shape of the foot’s plantar surface, medially, along the longitudinal arch, while cushioning the heel and metatarsals” (col. 4, ll. 18-21). The upper surface (18) of the insole has a convex-shaped projection (22) that extends upwardly and outwardly and supports the arch area (col. 8, ll. 51-52; col. 8, l. 68 – col. 9, l. 2; fig. 5A).

The Appellants argue that “Schroer, Jr. et al has no disclosure of the position of a peripheral contour relative [to] the longitudinal arch or transverse arch or any of the foot bones” (Br. 4). Schroer’s figures 1A and 1B show that the arch support extends along the entire arch’s length and, therefore, conforms to the arch in the longitudinal direction. Schroer’s figure 1 shows that the arch support extends substantially across the arch’s transverse direction, and a comparison of Schroer’s figures 5A (no foot) and 5B (with foot (load 26)) shows that the arch support slopes downward across the full width of the arch under no load and, under load, slopes downward across the arch’s transverse direction such that it conforms to the arch across the full transverse direction of the arch. Because the arch support conforms to the arch along its transverse direction, it necessarily conforms to the arch region bones recited in the Appellants’ claims. We therefore are not convinced by the Appellants’ arguments (Br. 4-8; Reply Br. 2-4) regarding independent claim 1 or the bones recited in independent claims 9 and 45 and the dependent claims.

The Appellants argue that Schroer’s insole is not sized for a human foot of a predetermined size and that the arch support does not form part of a footbed that generally conforms to the plantar surface of a human foot (Br. 6-7). That argument is not persuasive because Schroer’s insole is designed to fit the general shape of a foot’s plantar surface (col. 4, ll. 18-19). The predetermined human foot size is the foot size corresponding to the size of the insole as manufactured. Because both the Appellants’ footbed (claim 5) and Schroer’s insole (col. 4, ll. 18-19) conform to the foot’s plantar surface,

Schroer's arch support necessarily forms part of a footbed as that term is used by the Appellants.

For the above reasons we are not convinced of reversible error in the rejection under 35 U.S.C. § 102(b).

Rejection under 35 U.S.C. § 103

The Appellants argue that Schroer does not disclose the bones recited in the claims from which claims 7, 12, 16, 42 and 43 depend, and that Schroer does not disclose the bones recited in independent claim 45 (Br. 8-10). We are not persuaded by that argument for the reasons given above regarding the rejection under 35 U.S.C. § 102(b).¹

DECISION

The rejections over Schroer of claims 1-6, 8-11, 13-15 and 17 under 35 U.S.C. § 102(b), and claims 7, 12, 16, 42, 43 and 45 under 35 U.S.C. § 103, are affirmed.

AFFIRMED

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¹ It is undisputed that Schroer (col. 7, ll. 7-27) would have fairly suggested, to one of ordinary skill in the art, the Shore hardness, density, Ball Rebound and compression set required by the Appellants' claims 42 and 43.

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